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**FILED**  
**SAN MATEO COUNTY**  
MAR 25 2019

Clerk of the Superior Court

By  **CLERK**

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited  
16 liability company;

17 Plaintiff,

18 v.

19 FACEBOOK, INC., a Delaware  
corporation;  
20 MARK ZUCKERBERG, an individual;  
CHRISTOPHER COX, an individual;  
21 JAVIER OLIVAN, an individual;  
SAMUEL LESSIN, an individual;  
22 MICHAEL VERNAL, an individual;  
ILYA SUKHAR, an individual; and  
23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. CIV 533328

Assigned For All Purposes To  
Hon. V. Raymond Swope, Department 23

25 **DECLARATION OF** **Redacted**

26 **Redacted**

27 **REDACTED FOR PUBLIC FILING**

Hearing: 5/13/19  
Time 9:00 am

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

28 Trial Date: April 25, 2019

CIV533328  
DECL  
Declaration  
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1 I, [Redacted], declare:

2 1. I am over the age of 18. I make the following statements in response to Case Management  
3 Order No. 19, ¶3. I make this Declaration from personal knowledge, and if called to testify, I could and  
4 would competently testify thereto.

5 2. I received a copy of the Stipulated Protective Order and blank certification in this action  
6 on May 10, 2018.

7 3. I executed the certification on May 14, 2018.

8 4. As detailed below, I have deleted most documents. I understand from the Plaintiff's that  
9 they sent me Facebook's confidential and highly confidential information on May 14, 2018, May 16,  
10 2018, June 6, 2018, and June 27, 2018. I take this information from the draft declaration prepared by Mr  
11 Godkin.

12 5. As used herein, "Facebook's confidential or highly confidential information" includes all  
13 information copied or extracted from or reflecting the confidential or highly confidential information,  
14 all copies, excerpts, summaries or compilations of confidential or highly confidential information, and  
15 any testimony, conversations or presentations by parties or their counsel that might reveal confidential  
16 or highly confidential information. I stored and maintained Facebook's confidential and highly  
17 confidential information in a secure location to which only I had access.

18 6. I destroyed all Facebook confidential and highly confidential information in my custody  
19 or control between January 4, 2019 and January 11, 2019.

20 7. Case Management Order 19 requires me to confirm my "compliance with the Stipulated  
21 Protective Order by "not reveal[ing] or discus[ing] confidential information to or with any person who  
22 is not entitled to receive such information"." I have sought to make my position on this matter clear in  
23 recent correspondence with the parties to these proceedings and the court. I exhibit a copy of that entire  
24 chain of correspondence.

25 8. Given the widespread public scrutiny of this case and the potential criminality of  
26 breaching the Protective Order I want to be clear as to what I did and did not do, rather than asserting  
27 that I have complied without a deeper examination of my involvement in the case. It is a difficult,  
28

1 complex and costly task to establish the extent of my compliance. I consider that such an undertaking  
2 would be unfair and prejudicial to me, for the reasons detailed in my correspondence. In summary:

- 3 a. **Firstly**, there is no evidence that I have not complied with the order. At its highest, the  
4 evidence is based on the actions of third parties and an email in which I said I was able  
5 to join a call. My records confirm that I did not join that call and I cannot be held liable  
6 for what others say about me. There is simply no evidence that I have breached the  
7 Protective Order, or even that I intended to do so.
- 8 b. **Secondly**, I am still not clear why Facebook consider that I have not complied with the  
9 order. The *ex parte* application by Facebook was misleading and inaccurate. There was  
10 no need for an application to be made on this basis. The correspondence I have had with  
11 Facebook since only serves to confirm that there is in fact no evidence to suggest that I  
12 have breached the terms of the order yet I find myself having to undertake considerable  
13 effort at considerable cost to comply with an order that was procured on a material  
14 misrepresentation.
- 15 c. **Thirdly**, throughout my involvement in this matter, as an independent expert retained by  
16 the Plaintiffs, I have followed the instructions and advice of those that retained me. I  
17 always operated under the assumption that the parties would act with respect to the  
18 Protective Order. I did not therefore give a detailed analysis to the terms of the Protective  
19 Order, as I had no reason to believe that the terms would be breached. I now realize that  
20 the terms of the Protective Order are complex and require detailed analysis. In order for  
21 me to fully explain what I have or have not done, I will need further legal advice and a  
22 deep consideration of all documents and communications. For reasons detailed below,  
23 this may not be entirely possible. However, whatever I do will be very costly to me and  
24 time consuming. Given this prejudice, I do not think it is fair for me to have to go through  
25 such an undertaking. For reasons dealt with below, I also think that such an undertaking  
26 would not be necessary.

d. **Fourthly**, I no longer have the relevant information to be able to provide a complete picture, as I have destroyed the material. As I confirmed to Mr. Godkin and as per his request, I destroyed Facebook's confidential and highly confidential information by January 11, 2019. I no longer have access to that Facebook confidential or highly confidential information. This makes a historical analysis of compliance very difficult, leaving aside whether I even have all the correspondence.

9. For the avoidance of doubt and to assist the court, I want to make it clear that the issues in concern in Facebook's *ex parte* application had nothing to do with me. I was not a party to the events that led to the DCMS Committee's receipt of Facebook's confidential and highly confidential information. Whilst I have given evidence to the DCMS Committee on matters to which I have expertise, I was simply not involved with the passing of information from the Plaintiffs – or anyone else – to the DCMS Committee. There is no evidence that I was so involved and I would not have involved myself in this breach of the Protective Order.

10. Furthermore, there was an accusation that because a third party, a **Redacted**, had tagged me in a Twitter post, I had somehow been involved with him receiving and disseminating Facebook's confidential or highly confidential information. I understand this accusation has now been conceded by Facebook as being without merit. However, for clarity and for the court record, I confirm that I had no involvement with **Redacted** and do not know why he tagged me on Twitter. I can only presume he did so because of my general expertise but cannot say for certain. In any event, I did not provide any information to him at all, have not discussed the documents with him and I cannot be held responsible for the actions of a third party.

11. As the purpose of the *ex parte* application and Case Management Order No. 19 is fulfilled, as far as these issues are in my knowledge and control, by paragraphs 9 and 10 of this declaration, I cannot see the necessity for any further declaration from me.

12. I also feel like this whole process has been deeply unfair to me. I received no independent legal advice on the terms of the Protective Order at the outset, which I now realize was a mistake. There is however no evidence that I have breached the Protective Order. Nevertheless, I was been subject to

1 an *ex parte* application by Facebook, which was both unnecessarily *ex parte* and misleading. I have  
2 thereafter incurred costs trying to explain my position. I have incurred further costs since. This has all  
3 come from my own funds.

4 13. If I were forced to provide a full explanation of my compliance with the Protective Order,  
5 this would incur considerable costs, time and resources. Given the lack of evidence of any breach of the  
6 Protective Order, the misleading nature of the accusations against me in Facebook's *ex parte* application  
7 and that I can positively say that I was not involved with the breaches of concern, such a further  
8 declaration would seem unfair and unnecessary. I would instead hope that the Honorable Judge Swope  
9 and the Court would rather give deference to the problems I have faced and release me from any further  
10 action.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
12 true and correct.

13 Executed March 20, 2019

14  
15 **Redacted**

16  
17 **Redacted**

# EXHIBIT



**Sonal N. Mehta**

**Durie Tangri**

By email: [smehta@durietangri.com](mailto:smehta@durietangri.com)

05 March 2019

Our ref: RAN/32411

Dear Ms Mehta

Redacted

We have been instructed to represent the above named.

Our client has received correspondence from David Godkin of Birnbaum & Godkin, LLP relating to *Six4Three v Facebook Inc. et al.*

On 1 March 2019, Mr Godkin provided Redacted with an order from the Superior Court of California explaining that our client was required to provide a declaration to the court by 17:00 Eastern Time on 5 March 2019. Mr Godkin did not provide the background documents to that order until 20:00 GMT on 4 March 2019, after a request for those documents from this firm.

Having considered those documents, we are instructed to write to you to provide some clarity to our client's role in the *Six4Three* litigation as there appears to be a misunderstanding of his role and his retainer. You will appreciate that our client has been cut out from the process to date, which has prejudiced his ability to explain his role and the basis for his limited involvement in the case.

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1. Our client's background

Redacted is a well-known privacy and data rights activist. He is renowned for his insight into the European data protection regime, as well as his capacity to convey such subjects to a wider audience.

He has been regularly sought for commentary and insight in the media in this role. Redacted

Redacted. We enclose examples of that commentary for your client's consideration, which demonstrate Redacted unique ability to humanise complex technical issues and to explain the importance of the data protection regime as a matter of wider public interest.

2. Our client's role with Six4Three

In the context of that expertise, our client was approached by Mr Godkin to act as an expert on public interest elements of the *Six4Three* litigation. Redacted was provided with a letter of engagement on 14 May 2018. We enclose a copy of that engagement letter.

You will see that the terms of the retainer were not well drafted but that Redacted was retained by Birnbaum & Godkin, LLP to "assist [them] in reviewing Facebook's arguments related to digital privacy issues." This is what our client understood his role to be and acted at the instruction of Birnbaum & Godkin, LLP and their clients in this litigation. Redacted has not been paid for these services.

To be clear, Redacted is not a lawyer and was therefore reliant on Birnbaum & Godkin, LLP to understand the US process and the terms of the Protective Order.

### 3. Execution of the Protective Order

Redacted was provided with the Protective Order by Birnbaum & Godkin, LLP on 10 May 2018. The certificate was executed on 14 May 2018. We enclose the certified version.

Klein & Gross LLP were appointed as Redacted agent for service of process, on the recommendation of Birnbaum & Godkin, LLP. Redacted was not provided with any independent legal advice on the terms of the order at the time it was provided to him nor when it was executed.

### 4. Current status of documents

On 4 January 2019, Mr Godkin requested Redacted to destroy all confidential and highly confidential documents. Mr Godkin requested Redacted to do so, as Birnbaum & Godkin, LLP were no longer able to act for the Plaintiff.

Redacted destroyed all Facebook confidential and highly confidential information in his custody or control between 4 January 2019 and 11 January 2019.

Redacted maintained a contemporaneous record of the documents he had received, as and when he received them. Accordingly, he is able to confirm that he has deleted all the documents he had received marked "Confidential" or "Highly Confidential" under the Protective Order. These are the documents listed in Annex 1. He also received internal case summaries prepared by the Plaintiffs and has permanently deleted those documents as well.

### 5. Further matters

Our client is concerned by the nature of the allegations levied at him. Being kept from these proceedings has prejudiced his position by preventing him from being able to explain his limited role. For instance, page 7 line 8 of Facebook's *ex parte* application of 25 February 2019 suggests that Redacted agreed to "confirm details of the confidential

information" to reporters "anonymously." Redacted denies having said the same and has not been provided with the document referred to. He is unaware of any such email and should it exist, please provide it to Redacted through this firm.

We trust that the information provided with this letter and enclosures clarifies the position for Facebook and quells any further concerns your client may have. We should be grateful if you could provide a copy of this letter to the court and the Honorable Judge V. Raymond Swope accordingly.

Should you have any queries in respect of this matter please contact Mr Ravi Naik of our offices.

Yours faithfully

**Irvine Thanvi Natas Solicitors**

cc. David Godkin, Birnbaum & Godkin, LLP

## Annex 1: Documents deleted

- [illegible]

- Redacted
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BIRNBAUM &  
GODKIN, LLP  
ATTORNEYS AT LAW

David S. Godkin  
Direct Dial: (617) 307-6110  
godkin@birnbaumgodkin.com

May 14, 2018

BY EMAIL ONLY [Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

*Re: Six4Three, LLC v. Facebook, Inc., Civ. 533328*

Dear [Redacted]

I am writing to confirm that Birnbaum & Godkin, LLP, as counsel for Six4Three, LLC, is engaging you as an expert consultant in the above-referenced matter to assist us in reviewing Facebook's arguments related to digital privacy issues. The initial phase of this engagement will involve your review of a brief and declaration that we have prepared in opposition to a motion to strike filed by Facebook, both of which include citations to various documents produced by Facebook in the above litigation. In addition, we will provide you with such of the Facebook documents that you request. You have agreed that you will not charge for this phase of the engagement. We will discuss compensation for later phases of the engagement, including possible testimony, and related compensation for your time, at a later date.

You agree that you will maintain in the strictest of confidence all aspects of this engagement including, but not limited to, all materials reviewed, generated or received by you or sent by you to this firm or our client. You will refrain from speaking with anyone about this matter and you will treat all communications with my client and my firm as privileged. Finally, you agree that any materials provided to you and any report that you prepare at our request shall be the property of the attorneys who have retained you and will not be used or disclosed without our consent.

I understand that you have already reviewed the Protective Order entered by the Court on October 24, 2016 and that you will sign the certification to same before we provide you with any documents. The brief and declaration that we will provide to you reference information that has been designated by Facebook as Confidential or Highly Confidential and are subject to the Protective Order. The Facebook documents that you request have also been designated by Facebook as Confidential or Highly Confidential and are subject to the Protective Order.

If this letter accurately describes our agreement, please sign the letter in the space provided and return it to me.



Redacted

May 14, 2018

Page Two

I look forward to working with you.

Very truly yours,

David S. Godkin

DSG/cam

AGREED AND ACCEPTED:

Redacted

Redacted

Date:

# Redacted



# Redacted



# Redacted



# Redacted



# Redacted



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# Redacted



Redacted

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9 Attorneys for Defendant  
Facebook, Inc.

**FILED**  
**SAN MATEO COUNTY**

OCT 25 2016

By   
DEPUTY CLERK

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN MATEO**

14 SIX4THREE, LLC, a Delaware limited  
liability company,

15  
16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware  
corporation and DOES 1-50, inclusive,

19 Defendant.

Case No. CIV533328

**STIPULATED [PROPOSED]  
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this  
22 case, the parties, by and through their respective undersigned counsel and subject to the approval  
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping  
26 the relevant page or as otherwise set forth herein) any document or response to discovery which  
27 that party or non-party considers in good faith to contain information involving trade secrets, or

28 CIV533328  
ORD  
Order  
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-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER  
CASE NO. CIV533328



1 confidential business, financial, or personal information, including personal financial information  
2 about any individual or entity; information regarding any individual's or entity's banking  
3 relationship with any banking institution, including information regarding financial transactions  
4 or financial accounts, and any information regarding any individual or entity that is not otherwise  
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and  
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or  
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as  
8 otherwise set forth herein) any document or response to discovery which that party or non-party  
9 considers in good faith to contain information involving highly sensitive trade secrets or  
10 confidential business, financial, or personal information, the disclosure of which would result in  
11 the disclosure of trade secrets or other highly sensitive research, development, production,  
12 personnel, commercial, market, financial, or business information, or highly sensitive personal  
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the  
14 California Rules of Court or under other provisions of California law. Where a document or  
15 response consists of more than one page, the first page and each page on which confidential  
16 information appears shall be so designated.

17       2.     A party or non-party may designate information disclosed during a deposition or in  
18 response to written discovery as Confidential Information or Highly Confidential Information by  
19 so indicating in said responses or on the record at the deposition and requesting the preparation of  
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,  
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the  
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated  
23 as Confidential Information or Highly Confidential Information. Any other party may object to  
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the  
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has  
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.  
27 After the thirty (30) day period for designation has lapsed, any documents or information  
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9  
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies  
3 of the designated material in their possession or control with the specified designation. A party  
4 that makes original documents or materials available for inspection need not designate them as  
5 Confidential Information or Highly Confidential Information until after the inspecting party has  
6 indicated which materials it would like copied and produced. During the inspection and before the  
7 designation and copying, all of the material made available for inspection shall be considered  
8 Highly Confidential Information.

9       3. All Confidential Information or Highly Confidential Information produced or  
10 exchanged in the course of this case (not including information that is publicly available) shall be  
11 used by the party or parties to whom the information is produced solely for the purpose of this  
12 case. Confidential Information or Highly Confidential Information shall not be used for any  
13 commercial competitive, personal, or other purpose. Confidential Information or Highly  
14 Confidential Information must be stored and maintained by a receiving party at a location and in a  
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated  
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only  
17 the Confidential Information or Highly Confidential Information produced or exchanged in this  
18 case, but also (1) any information copied or extracted from or reflecting the Confidential  
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or  
20 compilations of Confidential Information or Highly Confidential Information; and (3) any  
21 testimony, conversations, or presentations by parties or their counsel that might reveal  
22 Confidential Information or Highly Confidential Information. However, the protections  
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any  
24 information that is in the public domain at the time of disclosure to a receiving party or becomes  
25 part of the public domain after its disclosure to a receiving party as a result of publication not  
26 involving a violation of this Stipulated Protective Order, including becoming part of the public  
27 record through trial or otherwise; and (b) any information known to the receiving party prior to  
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained  
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of  
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be  
5 disclosed to any person other than:

- 6 (a) counsel for the respective parties to this litigation, including in-house  
7 counsel and co-counsel retained for this litigation;
- 8 (b) employees of such counsel;
- 9 (c) individual parties or officers or employees of a party, to the extent deemed  
10 necessary by counsel for the prosecution or defense of this litigation;
- 11 (d) consultants or expert witnesses retained for the prosecution or defense of  
12 this litigation, provided that each such person shall execute a copy of the  
13 Certification annexed to this Order (which shall be retained by counsel to  
14 the party so disclosing the Confidential Information and made available  
15 for inspection by opposing counsel during the pendency or after the  
16 termination of the action only upon good cause shown and upon order of  
17 the Court) before being shown or given any Confidential Information, and  
18 provided that if the party chooses a consultant or expert employed by the  
19 opposing party or one of its competitors, the party shall notify the  
20 opposing party, or designating non-party, before disclosing any  
21 Confidential Information to that individual and shall give the opposing  
22 party an opportunity to move for a protective order preventing or limiting  
23 such disclosure;
- 24 (e) any authors or recipients of the Confidential Information or a custodian;
- 25 (f) the Court, court personnel, and court reporters; and
- 26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall  
27 sign the Certification before being shown a confidential document.  
28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated  
2 the Confidential Information is represented or has been given notice that  
3 Confidential Information produced by the party may be used. At the  
4 request of any party, the portion of the deposition transcript involving the  
5 Confidential Information shall be designated "Confidential" pursuant to  
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be  
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of  
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be  
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except  
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or  
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential  
14 Information shall not reveal or discuss such information to or with any person who is not entitled  
15 to receive such information, except as set forth herein. If a party or any of its representatives,  
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential  
17 Information to persons who are not authorized to use or possess such material, the party shall  
18 provide immediate written notice of the disclosure to the party whose material was inadvertently  
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential  
20 Information is being used or possessed by a person not authorized to use or possess that material,  
21 regardless of how the material was disclosed or obtained by such person, the party shall provide  
22 immediate written notice of the unauthorized use or possession to the party whose material is  
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding  
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential  
26 Information or Highly Confidential Information, all documents and chamber copies containing  
27 Confidential Information or Highly Confidential Information which are submitted to the Court  
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If  
2 Confidential Information or Highly Confidential Information is included in the first page attached  
3 to the outside of the envelopes, it may be deleted from the outside copy. The word  
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the  
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential  
7 Information and is not to be opened or the contents revealed, except by Order of the  
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential  
10 Information documents or discovery materials produced by a non-party by providing written  
11 notice to all parties of the relevant document numbers or other identification within thirty (30)  
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for  
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be  
14 treated as Confidential Information. Any party or non-party may voluntarily disclose to others  
15 without restriction any information designated by that party or nonparty as Confidential  
16 Information or Highly Confidential Information, although a document may lose its confidential  
17 status if it is made public. If a party produces materials designated Confidential Information or  
18 Highly Confidential Information in compliance with this Order, that production shall be deemed  
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,  
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such  
22 party may at any time give written notice to the party or non-party who designated the material.  
23 The party or non-party who designated the material shall have twenty (20) days from the receipt  
24 of such written notice to apply to the Court for an order designating the material as confidential.  
25 The party or non-party seeking the order has the burden of establishing that the document is  
26 entitled to protection.  
27  
28

1           10.   Notwithstanding any challenge to the designation of material as Confidential  
2 Information or Highly Confidential Information, all documents shall be treated as such and shall  
3 be subject to the provisions hereof unless and until one of the following occurs:

4                   (a)   the party or non-party who claims that the material is Confidential  
5                           Information or Highly Confidential Information withdraws such  
6                           designation in writing; or

7                   (b)   the party or non-party who claims that the material is Confidential  
8                           Information or Highly Confidential Information fails to apply to the Court  
9                           for an order designating the material confidential within the time period  
10                          specified above after receipt of a written challenge to such designation; or

11                  (c)   the Court rules the material is not Confidential Information or Highly  
12                          Confidential Information.

13           11.   All provisions of this Order restricting the communication or use of Confidential  
14 Information or Highly Confidential Information shall continue to be binding after the conclusion  
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the  
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)  
17 days either (a) return such documents to counsel for the party or non-party who provided such  
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly  
19 Confidential Information is returned or destroyed, the receiving party must submit a written  
20 certification to the producing party (and, if not the same person or entity, to the designating party)  
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential  
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not  
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or  
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,  
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or  
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The  
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and  
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the  
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
6 including the time limits for filing any motions or applications for extension of time pursuant to  
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce  
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product  
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material  
11 protected by privilege or work product protection. Any witness or other person, firm or entity  
12 from which discovery is sought may be informed of and may obtain the protection of this Order  
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition  
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information  
16 is inadvertently produced without such designation, the party or non-party that inadvertently  
17 produced the information without designation shall give written notice of such inadvertent  
18 production promptly after the party or non-party discovers the inadvertent failure to designate  
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the  
20 inadvertent failure to designate), together with a further copy of the subject information  
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production  
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the  
23 information that was inadvertently produced without designation shall promptly destroy the  
24 inadvertently produced information and all copies thereof, or, at the expense of the producing  
25 party or non-party, return such together with all copies of such information to counsel for the  
26 producing party and shall retain only the newly-produced versions of that information that are  
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not  
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section  
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is  
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent  
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or  
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney  
8 work product protection, or other applicable protection in this case or any other federal or state  
9 proceeding, provided that the producing party shall notify the receiving party in writing of such  
10 protection or privilege promptly after the producing party discovers such materials have been  
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated  
13 Protective Order, with respect to discovery material then in the custody of another party, that  
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent  
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent  
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the  
17 producing party, or destroy all such claimed Inadvertent Production Material (including  
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the  
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly  
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the  
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The  
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact  
24 or circumstance of the inadvertent production. The producing party retains the burden of  
25 establishing the privileged or protected nature of any inadvertently disclosed or produced  
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall  
27 be treated in accordance with Paragraph 14(b) above.

1 (d) If a party, in reviewing discovery material it has received from any other  
2 party or any non-party, finds anything the reviewing party believes in good faith may be  
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further  
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly  
5 identify the material in question to the producing party (by document number or other equally  
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the  
7 producing party will make a claim of inadvertent production. If the producing party makes such a  
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,  
10 they will need to amend or supplement the terms of this Order. To the extent production of  
11 source code becomes necessary in this case, the parties will work expeditiously to propose  
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that  
14 compels disclosure of any Confidential Information or Highly Confidential Information, the  
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall  
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to  
19 issue in the other litigation that some or all of the material covered by the subpoena or order is  
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this  
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
23 the designating party whose Confidential Information or Highly Confidential Information may be  
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena  
26 or court order shall not produce any Confidential Information or Highly Confidential Information  
27 before a determination by the court from which the subpoena or order issued, unless the party has  
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these  
2 provisions should be construed as authorizing or encouraging a receiving party in this action to  
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-  
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”  
7 Such information produced by non-parties in connection with this litigation is protected by the  
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to  
11 produce a non-party’s confidential information in its possession, and the party is subject to an  
12 agreement with the non-party not to produce the non-party’s confidential information, then the  
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party  
15 that some or all of the information requested is subject to a confidentiality agreement with a non-  
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated  
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-  
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court  
23 within 28 days of receiving the notice and accompanying information, the receiving party may  
24 produce the non-party’s confidential information responsive to the discovery request. If the non-  
25 party timely seeks a protective order, the receiving party shall not produce any information in its  
26 possession or control that is subject to the confidentiality agreement with the non-party before a  
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the  
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly  
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any  
4 party from asserting in good faith that certain Confidential Information or Highly Confidential  
5 Information requires additional protections. The parties shall meet and confer to agree upon the  
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party  
7 waives any right it otherwise would have to object to disclosing or producing any information or  
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives  
9 any right to object on any ground to use in evidence of any of the material covered by this  
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any  
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly  
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other  
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,  
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those  
17 Rules.

18 19. A party that files with the Court, or seeks to use at trial, materials designated as  
19 Confidential Information or Highly Confidential Information, and who seeks to have the record  
20 containing such information sealed, shall submit to the Court a motion or an application to seal,  
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court, or seeks to use at trial, materials designated as  
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who  
24 does not seek to have the record containing such information sealed, shall comply with either of  
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential  
27 Information or Highly Confidential Information, the submitting party shall  
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information  
2 pursuant to this Order, of the submitting party's intention to file or use the  
3 Confidential Information or Highly Confidential Information, including  
4 specific identification of the Confidential Information or Highly  
5 Confidential Information. Any affected party or non-party may then file a  
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or  
8 Highly Confidential Information, the submitting party shall submit the  
9 materials pursuant to the lodging-under-seal provision of California Rule of  
10 Court 2.551(d). Any affected party or non-party may then file a motion to  
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)  
12 business days after such lodging. Documents lodged pursuant to California  
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall  
14 be unsealed upon expiration of ten (10) business days, absent the filing of a  
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or  
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)  
18 shall contain sufficient particularity with respect to the particular Confidential Information or  
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings  
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22  
23 DATED: \_\_\_\_\_, 2016

24 **PERKINS COIE LLP**

25 By: \_\_\_\_\_  
26 Julie E. Schwartz

27 *Attorneys for Defendant*  
28 *Facebook, Inc.*

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DATED: \_\_\_\_\_, 2016


**BIRNBAUM & GODKIN, LLP**

By: \_\_\_\_\_  
David Godkin

Attorneys for Plaintiff  
SIX4THREE, LLC

**IT IS SO ORDERED.**

DATED: 10/24, 2016

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on \_\_\_\_\_, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ located at the address of \_\_\_\_\_ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this \_\_\_\_ day of \_\_\_\_\_, 2016, at Redacted.

Redacted

By: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Redacted

# DurieTangri

Sonal N. Mehta  
415-376-6427 (direct)  
415-362-6666 (main)  
smehta@durietangri.com

March 6, 2019

## VIA EMAIL

Ravi Naik  
Irvine Thanvi Natas Solicitors  
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Re: **Redacted**

Dear Mr. Naik,

We are in receipt of your correspondence dated March 5, 2019. As you know, we represent Facebook in *Six4Three, LLC v. Facebook Inc., et al.*, Case No. CIV533328, which is currently pending in San Mateo Superior Court, in California. As you know, the case has been the subject of significant international attention because Six4Three and its legal team have admitted to leaking Facebook's confidential and highly confidential materials in violation of multiple orders of the Superior Court. As part of the investigation into these violations, it has recently come to light that Six4Three retained your client, **Redacted**, to consult on the litigation, and, in the process, disclosed Confidential and Highly Confidential Facebook documents to **Redacted**.

At the outset, we disagree that **Redacted** "has been cut out from the process to date." Six4Three's counsel of record has stated that, until early January 2019, **Redacted** served as a retained expert in this litigation. In that capacity, **Redacted** worked for and at the direction of Six4Three's counsel of record, and there is no reason that **Redacted** would have been "cut out from the process" or "kept from these proceedings" except at the hands of the Six4Three legal team with whom he was working. In any event, the San Mateo Superior Court maintains public records of this litigation online. Those records, and developments in this case generally, have been the subject of international media attention for months. Indeed, **Redacted** has commented extensively on these proceedings since Mr. Kramer illegally disclosed Facebook's Confidential and Highly Confidential information to the DCMS Committee. See generally <https://twitter.com/podehaye/>.

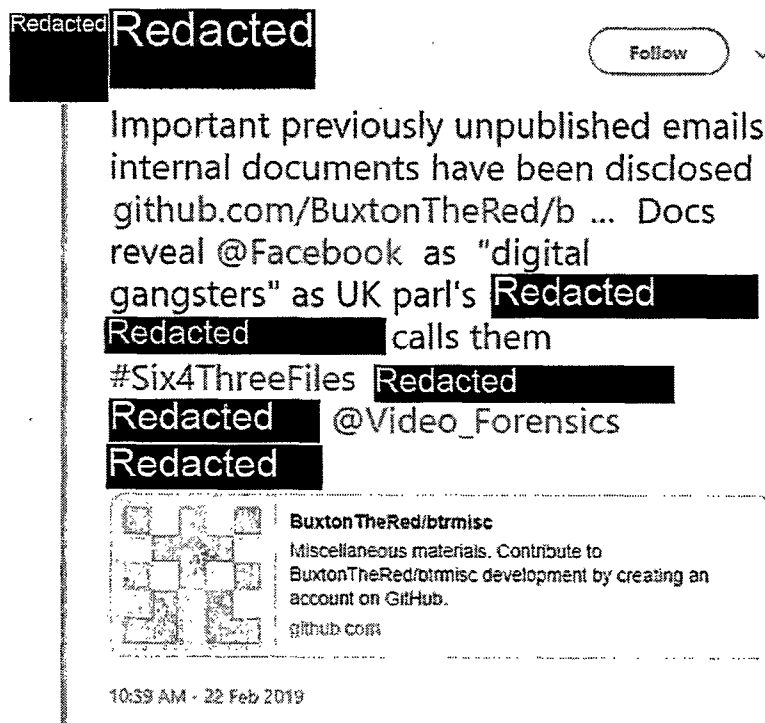
You asked that Facebook provide documents related to Six4Three's discussions of **Redacted** role in the litigation with journalists. Because these are communications between Six4Three's legal team (with whom **Redacted** was coordinating) and members of the media (with whom we have reason to believe

[Redacted] was directly in contact), we assume that [Redacted] is already aware of these communications or can readily obtain them from the Six4Three team with whom he was working. Suffice to say, the communications show that Six4Three and its legal team specifically suggested that journalists could rely on [Redacted] as an anonymous source who could confirm Six4Three's claims about the contents of Facebook's Confidential and Highly Confidential documents for international media, and expressly discussed the need to keep [Redacted] role in these communications secret from Facebook and the Court. Those discussions occurred within days of [Redacted] engagement as an expert in this action.

While we appreciate your effort to provide "some clarity to [Redacted] role," your letter raises more questions and concerns than it answers. Having agreed to be subject to the jurisdiction of the Superior Court in San Mateo County for any enforcement proceedings relating to the Court's protective order and having expressed his desire to be directly involved in this inquiry, we expect that [Redacted] will have no objection to promptly addressing the following queries so that Facebook and the Court can evaluate the appropriate next steps. In particular:

*First*, although your letter acknowledges that [Redacted] was provided with the Court's protective order and executed the certificate declaring under penalty of perjury that he would be bound by it, your letter is noticeably silent on whether [Redacted] actually complied with the terms of the protective order. As you know, the Court's order demanded that [Redacted] address in a sworn declaration whether he, among other matters, complied with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information[.]" That declaration was due yesterday, March 5, 2019. To be clear, that declaration should be made under penalty of perjury under California law and should address whether [Redacted] at any time confirmed, verified, or commented *in any way* on media or third-party inquiries regarding Facebook's Confidential and Highly Confidential information. We remind you that [Redacted] "consent[ed] to the jurisdiction of the San Mateo Superior Court for the purpose of enforcing the [Stipulated Protective Order.]" Please comply immediately.

*Second*, and relatedly, your letter is also noticeably silent on what [Redacted] did with Facebook's Confidential or Highly Confidential information (or copies, summaries, excerpts, or compilations thereof) between the time he was engaged in this matter and executed a protective order certificate (both on May 14, 2018) and when he says he destroyed all Facebook Confidential and Highly Confidential information ("between 4 January 2019 and 11 January 2019."). This silence is particularly concerning because, based on Annex 1 to your letter, it appears that a number of documents that were provided to [Redacted] pursuant to the requirements of the protective order (and otherwise sealed by the Court) have since been publicly leaked via a Github share maintained by [Redacted]. In publicizing the leak of these sealed materials on Twitter, an investigative journalist working with [Redacted], specifically pointed to [Redacted].



Alone, and in conjunction with the other information we have learned to date, Facebook naturally has serious concerns that [Redacted] may have been involved (directly or indirectly) in the distribution of confidential and sealed Facebook documents (or the disclosure of information contained in those documents) in violation of multiple court orders. Again, the Court has ordered that [Redacted] address in a sworn declaration whether he complied with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information[.]" That declaration should therefore detail and attach all communications and correspondence between [Redacted] (or anyone working with or on behalf of [Redacted], including counsel), on the one hand, and (1) the DCMS Committee; (2) [Redacted] (or [Redacted] staff); (2) [Redacted]; (3) [Redacted]; (4) [Redacted]; (5) any other member of the media; (6) [Redacted]; (7) any other governmental agency; (8) any non-profit organization; or (9) any other third party, on the other hand, since May 14, 2018 and relating to Facebook. The sworn declaration should specifically identify (but should not be limited to) any disclosure of any Facebook document or any information contained in a Facebook Confidential or Highly Confidential document (or summary or compilation thereof) to any third party, or any discussion with any third party related to the subject matter of the Confidential and Highly Confidential Facebook documents received by [Redacted].

*Third*, your letter does not address at all communications between Six4Three and its legal team and third parties (including media, governmental agencies, or non-profits) in which [Redacted] was involved. Although we have yet to receive all of the relevant documents, the limited information we have to date shows that [Redacted] was involved in communications between Six4Three and its legal team and such

third parties, including at least [Redacted]. [Redacted] sworn declaration should therefore detail and attach all communications and correspondence regarding Facebook Confidential and Highly Confidential material between Six4Three and its legal team and third parties (including media, governmental agencies, or non-profits) in which [Redacted] was involved.

*Fourth*, your letter states that [Redacted] is not a lawyer and was therefore reliant on Birnbaum & Godkin, LLP to understand the US process and the terms of the Protective Order,” and also acknowledges “Klein & Gross LLP [sic] were appointed as [Redacted] agent for service of process, on the recommendation of Birnbaum & Godkin, LLP. [Redacted] was not provided with any independent legal advice on the terms of the order at the time it was provided to him nor when it was executed.” [Redacted] sworn declaration should therefore detail his understanding of his obligations under the protective order, including any advice or instructions he received from Birnbaum & Godkin or Gross & Klein relating to the requirements of, or compliance with, the protective order.

*Fifth*, your letter raises serious questions as to the scope of [Redacted] engagement. Your March 5, 2019 letter states that [Redacted] “was approached by Mr Godkin to act as an expert on public interest elements of the *Six4Three* litigation.” [Redacted] sworn declaration should therefore specifically detail the scope of his engagement, (including the specific “public interest elements of the *Six4Three* litigation” on which he was purportedly consulting) and what expertise [Redacted] understood he was offering on those topics. For clarity, that sworn declaration should also detail the bases for your statement that the “terms of the retainer were not well drafted but that [Redacted] was retained by Birnbaum & Godkin, LLP to ‘assist [them] in reviewing Facebook’s arguments related to digital privacy issues.’ This is what our client understood his role to be and acted at the instruction of Birnbaum & Godkin, LLP and their clients in this litigation.”

*Sixth*, you state that [Redacted] “maintained a contemporaneous record of the documents he had received, as and when he received them.” Please produce this record immediately. In addition, [Redacted] sworn declaration should attest to its authenticity and explain its contents. Your disclosure of “Annex 1: Documents deleted” is incomplete, including because it does not (1) identify which discovery material Six4Three and its legal team provided to [Redacted] or when, or (2) identify the “internal case summaries” that [Redacted] received or when.

*Seventh*, as you know, Paragraph 4 of the Stipulated Protective Order in this matter provides that, “if [a] party chooses a consultant or expert employed by the opposing party or one of its competitors, the party shall notify the opposing party . . . before disclosing any Confidential Information to that individual[.]” See Stipulated Protective Order ¶ 4(d). Please provide a list of [Redacted] employers or engagements since April 10, 2015.

*Finally*, to the extent not already requested above, we request that you promptly produce all communications or correspondence between [Redacted] (or anyone working with or on behalf of [Redacted], including counsel) and Six4Three, [Redacted], [Redacted], or anyone at Birnbaum & Godkin or Gross & Klein relating to Facebook or the litigation between Six4Three and

Ravi Naik  
March 6, 2019  
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Facebook. Six4Three's legal team and **Redacted** have put those communications directly at issue through their statements on these subjects, and Facebook and the Court are entitled to evaluate the accuracy and completeness of those statements.

We request a response to these questions no later than close of business on March 7, 2019 so that we can promptly raise any outstanding questions or issues with the Court.

Very truly yours,



Sonal N. Mehta

SNM:za

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**Sonal N. Mehta**

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07 March 2019

Our ref: RAN/32411

Dear Ms Mehta

**Redacted**

We write further to your letter of 6 March 2019. That letter raises a number of issues that we address in turn below. However, that letter also clarifies that the order of 1 March 2019, in so far as it related to our client, was procured on the basis of conjecture, misrepresentation and a misunderstanding of **Redacted** position.

We accordingly ask for you to provide this correspondence to the Honorable Judge V. Raymond Swope, along with the relevant evidence, for the court to reconsider the terms of the order of 1 March 2019 made against our client. If you refuse to do so, please let us know and provide us with the Judge's contact details so we may write to him directly.

We address the issues arising in turn below.

#### 1. Representation

You "disagree" that **Redacted** has been cut out of the process leading to the order relating to him. The basis for this assertion is that **Redacted** "worked for and at the

direction of Six4Three's counsel of record, and there is no reason that [Redacted] would have been "cut out from the process" or "kept from these proceedings" except at the hands of the Six4Three legal team with whom he was working." This position is misconceived and contradictory.

Your client's position is based on (1) our client having previously been instructed to provide expert assistance to the Plaintiffs in this case and (2) that the *Six4Three* legal team would have kept him abreast of developments. This is misconceived:

1. [Redacted] was instructed to provide expert assistance to the Plaintiffs. He was not a Plaintiff himself nor was he represented by Birnbaum & Godkin, LLP.
2. You accept that your client made no efforts before, during or after their *ex parte* application to contact our client.
3. You accept that your client expected our client to have been updated by the Plaintiff and their legal team. There was no reason for the Plaintiffs or Birnbaum & Godkin LLP to keep him updated. That you expected he would betrays your client's misunderstanding of our client's role. You have sought to portray his as somehow in cahoots with the Plaintiffs. This could not be further from the truth and no evidence has been provided otherwise.
4. In fact, [Redacted] was not represented at all throughout these proceedings. He had no reason to be legally represented, as an independent expert to the proceedings.
5. Despite your assertion that the legal team representing the Plaintiffs have breached the order, you suggest that our client seek their legal counsel. This is a curious suggestion for you to make.
6. Rather, our client has sensibly instructed independent legal advice at his own expense.

You further state that the documents that led to the order are available online. This is a non sequitur. Your application was made on an *ex parte* basis.

There was no reason for the application to be made on an *ex parte* basis in respect of our client, given your previous lack of engagement with our client. Rather, you should have reached out to our client for his position as soon as you learned of his involvement and before making the application. Had you have made contact with our client, you could have avoided the inaccuracies and misrepresentation of our client contained within your *ex parte* application. You could have also avoided this entire chain of correspondence. Regrettably, you did not do so.

Whilst our client appreciates that your client had concerns over the integrity of the documents and sought to preserve their position, he has played no part in the concerns articulated in your *ex parte* application. This much would have been clear had you simply sought his position. You did not do so.

Our client's position is clear. He was instructed to act as an independent expert and did so. He acted on instructions at all times. He now finds himself caught up in the wrongdoing of others. Rather than understand his position, Facebook have sought to perpetuate his problem by way of a misguided and flawed *ex parte* application

## 2. Purpose of the 1 March 2019 Order

Having considered the *ex parte* application and supporting evidence, we note that your client's have already identified those that have breached the Protective Order. In particular, your letter of 6 March 2018 expressly states that "Six4Three and its legal team have admitted to leaking Facebook's confidential and highly confidential materials in violation of multiple orders of the Superior Court."

On the face of the application, it was designed to (1) contain further breaches and (2) understand the events leading to the disclosure of material by the DCMS Committee in the United Kingdom. To that end, our client can confirm:

1. He had no involvement in the passing of confidential or highly confidential information to the DCMS Committee, whether from the Plaintiff, their legal team or otherwise. Your client is already aware of the circumstances and chronology of those events. The individuals that have accepted being involved in this breach have not named [Redacted] as being involved, as he is not involved. You have no evidence to suggest otherwise and your client has rightly not suggested that our client had any involvement.
2. In respect of further breaches since the DCMS leak, our client was again not involved. As you are aware, our client deleted all the information as he was requested to by 11 January 2019.
3. Our client is not aware of how [Redacted] received these documents. The basis for your client's assertion that our client is somehow involved with [Redacted] is that he included [Redacted] in a tweet. Our client does not know why [Redacted] included him in that tweet but can assume it is [Redacted]. Holding our client responsible for the actions of a third party on Twitter is without merit. It would be unfair to hold your client responsible for everyone that mentions them on social media. Our client should not be expected to be treated in any other way.

Our client was not therefore involved in the breaches of concern to Facebook or the court. No evidence has been put forward to suggest otherwise. Indeed, Facebook do not make such a claim but rather limit their accusations against our client to conjecture and misrepresentation of the evidence.

3. The *ex parte* application

Having considered the *ex parte* application, we note that it is inaccurate, misleading and based on no more than conjecture. We detail the inaccuracies below.

**We ask that you inform the court of this material misrepresentation accordingly so that the court can reconsider the terms of the order vis-à-vis our client.**

The *ex parte* application states<sup>1</sup> (sic) "Gross & Klein produced a new e-mail sent by Redacted [REDACTED], Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously." That suggests that there is evidence that Redacted [REDACTED] sent an email stating that he is willing to provide or confirm details to reporters "anonymously". This is the totality of the evidence put forward against our client. There is no other submission made against Redacted [REDACTED] at all.

Our client strenuously denies having sent an email stating that he would act to provide or confirm information to reporters anonymously. He did not do so. We accordingly asked you for evidence of him having sent such an email in our letter of 5 March 2019. You refused to do so, instead directing our client to the *Six4Three* team (i.e. the parties that have admitted breaching the terms of the order).

No such evidence will exist. We assume that your client has instead quoted an email from a third party, as though it had come from our client. This is disingenuous, misleading and concerning, particularly where the application was made on an *ex parte* basis. Your client would have been under an obligation of full and frank disclosure when making an application on such a basis. It is regrettable that you did not comply with that obligation, which in turn undermines the application against our client in its entirety.

The 1 March 2019 order, in so far as it affects our client, was in fact procured on the basis of this single inaccurate issue. As it was made on an *ex parte* basis, our client has been unable to explain his position to the court and without having had a chance to understand the basis for the concerns against him. Having now considered those concerns, it is clear that they have no evidential basis.

This leaves two choices for your client:

1. Provide our client with the evidence that: (1) he has breached the terms of the Protective Order; and (2) he stated that he was willing to share or confirm confidential or highly confidential information to reporters "anonymously." Despite

requesting this in our letter of 5 March 2019, no such evidence has been provided to our client and our client understands that none will be available. To be clear, what a third party said about our client is irrelevant. Our client cannot be held responsible for the actions of a third party.

2. Alternatively, your client must accept that they misled the court in the *ex parte* application and ask the court to review the order against our client.

Your client will appreciate that the threat of perjury against our client is something he takes very seriously. However, at present that threat derives from conjecture at best and misrepresentation at worst.

Our client has had to pay for independent legal advice, for an issue that is not of his making. In order for the court and our client to understand if there is any basis for the suggestion that he has breached the Protective Order, such to require further information from our client, please ensure you respond to the issues raised above by 16:00 GMT on 9 March 2019.

**To be clear, our client is prejudiced by the manner in which Facebook sought the order and the inaccuracies within the *ex parte* application. Facebook have also already identified those that have breached the Protective Order and our client is no longer in possession of the documents. There is therefore little to be gained from our client providing further evidence to the court.**

**In order to avoid further prejudice, unfairness and cost to our client, we suggest that the court should release our client from the need for a further statement (1) in light of our correspondence and (2) in the absence of any evidence that he has breached the terms of the Protective Order.**

**Please ensure that this correspondence is placed before the Honorable Judge V. Raymond Swope as a matter of urgency.**

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<sup>1</sup> Page 7 lines 7 – 9

#### 4. Disclosure requests

You have made a series of disclosure requests from our client. Those request go beyond the terms of the 1 March 2019 order and there is in fact no basis for these requests. Rather, the requests are an expansive, abusive and ill-judged fishing expedition. For example, your request for “a list of Redacted employers or engagements since April 10, 2015” is simply absurd and without legal footing.

That your client would embark on such a course in fact betrays the real purpose for your client’s application – to seek to find evidence from our client of a series of unrelated matters. The simple fact is that there is no evidence that our client has breached the Protective Order and there is no further justification for such an expansive disclosure request.

However, in order to assist your client, our client can confirm:

1. As above, our client does not know how Redacted received the confidential or highly confidential documents.
2. Our client received no legal advice at all on the terms on the Protective Order.
3. The annex to our letter of 5 March 2019 was an entire list of documents that he has received.
4. As you are aware, our client has deleted all of the confidential or highly confidential information. He cannot therefore produce evidence that is not in his control. We are surprised by your request for information that our client has already told you he has deleted.

Our client provided the documents to your client on 5 March 2019 to assist your client and the court. As above, the Protective Order was procured from the court on 1 March 2019 on the basis of inaccurate information. Our client accordingly reserves his position in respect of that order until the court has had an opportunity to understand our client’s position and submissions on the *ex parte* application.

## 5. Summary

As the *ex parte* application was based on misrepresentation of the evidence, inaccuracies and conjecture, our client will not be complying with your requests until the court has had an opportunity to understand [Redacted] position.

As stated above, our client has been prejudiced by the manner in which Facebook sought the order and the misrepresentation of the evidence in the *ex parte* application. Had he been provided with an opportunity to explain his position before the application was made, he could have done so. Regrettably and as detailed above, the application was made in the absence of his position and proceeded on the basis of misrepresented facts. Facebook have also identified those that have breached the order and our client is no longer in possession of the documents. There is therefore little to be gained from our client providing further evidence to the court but producing such documentation would be costly and prejudicial to our client.

In order to avoid further prejudice and cost to our client, we suggest that the court should release our client from the need for a further statement in the absence of evidence that he has breached the terms of the Protective Order. Should the court, after a review of this correspondence, further order our client to provide this information he will review his position at that stage. However, we ask you to ensure that this correspondence is put before the court in determining the necessity of any further order against our client.

We therefore request that a copy of this letter, our letter of 5 March 2019 and your reply of 6 March 2019 is provided to the court and the Honorable Judge V. Raymond Swope as a matter of some urgency. If you are not willing to do so, please provide us with the contact details for the Judge accordingly so we may make contact directly.

Yours sincerely

**Irvine Thanvi Natas Solicitors**  
cc. David Godkin, Birnbaum & Godkin, LLP

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March 8, 2019

## VIA EMAIL

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Re: [Redacted]

Dear Mr. Naik,

We received your letter dated March 7, 2019 (hereinafter "Naik March 7 Letter"). We appreciate your effort to clarify certain questions set forth in our letter dated March 6, 2019 (hereinafter "Mehta March 6 Letter"). Specifically, we understand your position that [Redacted] (1) received no legal advice about the protective order; (2) received only those documents identified by Annex 1 to your March 5, 2019 letter, (3) had no involvement in the passing of confidential or highly confidential information to the DCMS Committee, and (4) does not know how [Redacted] received Facebook's confidential or highly confidential information, including those documents leaked via [Redacted] Github share.

Despite these responses, several of Facebook's most important questions remain outstanding. In addition, your letter demonstrates a fundamental misunderstanding of this litigation and your client's role in the dissemination of Facebook's confidential and highly confidential information. We clarify those issues below.

**First**, your letter does not answer the simple, central question posed by Facebook and the Court: Did [Redacted] comply with all terms of the protective order, including by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information"? At risk of being pedantic, that question is not answered by evasive statements such as, "[Redacted] has played no part in the concerns articulated in your *ex parte* application," "[Redacted] was again not involved [in further breaches since the DCMS leak]," and "[Redacted] was not . . . involved in the breaches of concern to Facebook or the court." Nor is it any answer that certain individuals have admitted their breach of the Stipulated Protective Order in this matter, e.g., Naik March 7 Letter at 3: Facebook's question is whether [Redacted] breached that order.

Pursuant to that inquiry, Facebook asked [Redacted] specific questions regarding his compliance with the protective order. *See generally* Mehta March 6 Letter at 2-4. Your letter makes no attempt to answer the vast majority of these questions. For example and without limitation, your March 7, 2019 letter:

- neither denies that [Redacted] communicated with individuals involved in the release of Facebook's documents, nor attaches such communications. *See* Mehta March 6 Letter at 3 (requesting communications with "(1) the DCMS Committee; (2) [Redacted] (or his staff); (2) [Redacted]; (3) [Redacted]; (4) [Redacted]; (5) any other member of the media; (6) [Redacted]; (7) any other governmental agency; (8) any non-profit organization; or (9) any other third party," since May 14, 2018 and relating to Facebook).
- neither denies that [Redacted] received communications between Six4Three and its legal team and third parties, nor attaches such communications. *See* Mehta March 6 Letter at 3-4.
- fails to set forth [Redacted] understanding of his obligations under the protective order, including whether that order prevented him from anonymously confirming for journalists or third parties the substance of Six4Three's allegations or the content of Facebook's confidential and highly confidential documents based on [Redacted] review of those documents. *See* Mehta March 6 Letter at 4.
- fails to identify the specific "public interest elements of the *Six4Three* litigation" on which [Redacted] was purportedly consulting, and what expertise [Redacted] understood he was offering on those topics. *See* Mehta March 6 Letter at 4.
- neither attaches the "contemporaneous record of the documents [Redacted] had received," nor provides a basis for refusing to do so. *See* Mehta March 6 Letter at 4.
- neither attaches communications between [Redacted] and Six4Three or its legal team, nor provides a basis for refusing to do so. *See* Mehta March 6 Letter at 4-5.

Rather than answer these simple questions, your letter argues that [Redacted] does not have to: The Court's Amended Case Management Order No. 19, your letter argues, resulted from a "material misrepresentation," whereby Facebook "quoted an email from a third party, as though it had come from our client." *See* Naik March 7 Letter at 5-6. We find this response curious, because it is false and because you purport to have "considered the *ex parte* application and supporting evidence" and thus know that there was no suggestion that [Redacted] sent the email, only that it evidences Six4Three's plan to use [Redacted] to leak confidential information to the press. Simply put, your letter mischaracterizes the bases for Facebook's concerns regarding [Redacted]. At risk of being repetitive, we set them forth below.

In late March 2018, Six4Three's CEO—Redacted—contacted reporters at *The Guardian* to discuss Six4Three's lawsuit against Facebook. Redacted spoke by phone with Redacted on March 29, 2018, after which he sent her an e-mail stating that he "look[ed] forward to . . . connecting with the folks you mentioned." See BG007204. Redacted replied a few days later: She said that she "[had not] managed to catch up with Redacted or Redacted yet[.]" *Id.* Weeks passed, and Redacted wrote to Kramer again: "I also spoke to Redacted," she wrote, "Redacted Redacted." Kramer responded a few days later, requesting "an introduction to Redacted" so that Six4Three could urge Redacted to file an amicus brief to unseal hundreds of confidential and highly confidential Facebook documents. See BG007206. Redacted sent Redacted personal e-mail address to Kramer on May 4, 2018 and said that "Redacted said he'd be happy for you to get in touch[.]" BG007208.

Five days after that, Redacted told Redacted that Six4Three had "reached out to Redacted" and "setup [a call] for next week." BG007211. Redacted wrote back within days, saying that she "had a chat with Redacted about how this might work." BG007212 (emphasis added). An hour later, Kramer responded, describing Six4Three's "off the record" conversations with "about a couple dozen news organizations." BG007213. Kramer then told Redacted that Redacted had agreed to serve as Six4Three's expert: "As soon as Redacted gets the required document back to us," Mr. Kramer wrote, "*we will share the evidence with him since he has agreed to serve as an expert witness in the case.*" BG007213 (emphasis added).

Three days later, on May 14, 2018, Redacted executed an engagement letter with Six4Three and the Certification annexed to the case's protective order. Under the engagement letter, Redacted agreed to "*refrain from speaking with anyone about this matter* and [to] treat all communications with my client and my firm as privileged." Pursuant to the protective order, Redacted agreed not to "reveal or discuss [Confidential Information or Highly Confidential Information] to or with any person who is not entitled to receive such information[.]"

A week after Redacted executed the engagement letter and protective order, Kramer and Redacted met face-to-face. Redacted sent an e-mail after the meeting to "lay out our thoughts at the moment." BG006391. *The Guardian's* "ideal" coverage plan, she said, would include "[a] main news story. . . And — ideally — some supporting quotes from Redacted. I understand these need to be anonymous but it would still be really useful to have these I think." Redacted—Six4Three's sole investor and a member of Six4Three's "legal team"—wrote back that night, asking whether Redacted could "*be an anonymous source verifying our allegations* without disclosing him as an expert witness in the case." BG006395 (emphasis added). Redacted responded a few minutes later: "Re Redacted she said, "*understood, though would still like to use anon quotes if possible.*" BG006395 (emphasis added). Redacted then responded to that message, writing, "*I think anonymous quotes from Redacted would be fine* so long as he isn't identified as an expert witness[.]" BG006398 (emphasis added). A few minutes later, Redacted wrote Redacted again: "The key thing with Redacted is that if the article identifies him as an expert witness *or bases his confirmation of the allegations on the fact that he has reviewed the evidence*, then Facebook will cry foul[.]" BG006399 (emphasis added).

Around the time these discussions took place, Six4Three's legal team was urging media and non-profit organizations to file amicus briefs to unseal hundreds of Facebook documents improperly lodged in connection with an unrelated filing. [Redacted] was instrumental in that campaign, as well. Despite signing a contract on May 14, 2018 that he would not "speak[] with anyone about this matter," [Redacted] *the very next day* e-mailed reporters at the Associated Press—copying Six4Three's legal team—to suggest a call about "how journalists could benefit from the discovery process." BG001308. A day after that, [Redacted] played press secretary again when he connected Six4Three's legal team to a POLITICO reporter in Brussels and suggested a call. See BG000149. Two weeks later, Six4Three's legal team copied [Redacted] on an e-mail exchange with [Redacted] about amicus briefs. See GKLLP000200. After [Redacted] suggested a conference call to discuss the case with the nonprofit, [Redacted] responded, "I am ready to join at that time if need be." *Id.*

As these facts demonstrate, Amended Case Management Order No. 19 was not "procured on the basis of [a] single inaccurate issue," and your suggestion otherwise, appears to be based on a misunderstanding of the record or misinformation provided to you by others. See Naik March 7 Letter at 5. Either way, multiple e-mail exchanges involving [Redacted] over the course of weeks in the spring of 2018 suggest that he reviewed Facebook's confidential and highly confidential information in order to further Six4Three's objectives with the news media. For that reason, Facebook repeats its simple request: please provide a sworn statement (under penalty of perjury in California) addressing the specific questions we have raised, including in particular a sworn statement that [Redacted] complied with all terms of the protective order, including by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information."

*Second*, specifically regarding our request for [Redacted] employment and engagement history, you call that request "simply absurd and without legal footing." See Naik March 7 Letter at 7. We disagree. [Redacted] agreed to be bound by the terms of the protective order, which require him to provide this information. Specifically, Paragraph 4(d) of the protective order provides that, "if the [retaining] party chooses a consultant or expert *employed by the opposing party or one of its competitors*, the party shall notify the opposing party . . . before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure[.]" (emphasis added). Only [Redacted] knows whether he has been employed or engaged by one of Facebook's competitors since the onset of this litigation. Accordingly, Facebook again requests that [Redacted] provide a list of his employers or engagements since April 10, 2015. Anything less deprives Facebook of the rights to which it is entitled under the protective order—to which [Redacted] agreed to be bound.

*Third*, your letter makes much of the fact that Facebook sought relief on an *ex parte* basis. *E.g.*, Naik March 7 Letter at 3, 5, and 8. We do not think it productive to engage in point-for-point argument on this subject. We note only that Facebook was entitled to seek *ex parte* relief because Facebook faced—and, indeed, continues to face—"irreparable harm [and] immediate danger" as a result of Six4Three's

Ravi Naik  
March 8, 2019  
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abuse of Facebook's confidential and highly confidential information. *See generally* Cal. R. Ct., rule 3.1202(c). The Court itself acknowledged this in granting the *ex parte* application.

**Fourth**, your letter requests that Facebook forward your correspondence to the Court. *See* Naik March 7 Letter at 8. It is not Facebook's role to inform the Court regarding your correspondence. We suggest you discuss this matter with Mr. Godkin who engaged **Redacted** and was responsible for supervising his engagement.

**Finally**, as to your comment about Facebook's "real purpose" for its application, *see* Naik March 7 Letter at 7, Facebook's concern is about the improper disclosures of its confidential information and the integrity of the Court's orders. Your client promised to comply with all the terms of the Protective Order. We are seeking—and are entitled to—answers on whether he did so.

Very truly yours,



Sonal N. Mehta

SNM:za

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By email: [smehta@durietangri.com](mailto:smehta@durietangri.com)

13 March 2019

Our ref: RAN/32411

Dear Ms Mehta

**Redacted**

We write further to your letter of 8 March 2019. We address the various issues arising in that letter in turn.

1. Misleading application

Your letter of 8 March 2019 seeks to provide a justification for the terms of your client's *ex parte* application against our client. Regrettably, that letter simply confirms that your client has misled the court. In particular:

1. The declaration by Mr Abrahamson stated "Gross & Klein produced a new e-mail sent by **Redacted**, Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously".
2. That statement expressly declares that our client was "willing to confirm details of Facebook's confidential information to reporters "anonymously". There is no evidence of our client having said this, yet your client / Mr Abrahamson presented this as fact.

3. We asked for evidence of this purported email, in our letters of 5 and 7 March 2019. None has been forthcoming.
4. Rather, the material contained in your letter of 8 March 2019 confirms that you have no evidence that our client said that he would confirm details of the confidential or highly confidential information, anonymously or otherwise. None will be available. Instead, you have confirmed our client's suspicion that your client has misled the court, by quoting third parties as though that quote was directly taken from our client.

In sum, Mr Abrahamson's statement is misleading and seeks to portray those quotes as coming directly from our client. You have not denied that this was a misleading statement nor have you sought fit to explain this error to the court.

You state that our letter of 7 March 2019 shows a "misunderstanding of this litigation". To the contrary, our client now understands full well that you had misled the court. Misleading the court in any litigation is a serious procedural error. In fact, misleading the court is a very serious matter indeed in any context.

## 2. Terms of the order of 1 March 2019

Further and contrary to your letter of 8 March 2019, our client has not sought to deny that your client is entitled to make an *ex parte* application. Rather, our client's concern is that your client has done so on false pretences. Your letter of 8 March 2019 confirmed our client's fears.

At its highest, you have cited third parties who explain plans *about* our client. He was not aware of those plans and was not copied into that correspondence. Those quotes even go so far as confirming that our client was not aware of the case, let alone in receipt of the confidential / highly confidential documents at that stage. You nevertheless quote from those emails (of which our client was unaware) as though those words had come from our client. This was a misrepresentation.

Your client sought and procured the order on the basis of this single inaccurate issue. There is no other evidence against our client. We presume you sought to mislead the court as you in fact have no evidence that our client breached the terms of the Protective Order. That misrepresentation has nonetheless led to a punitive order against our client.

Your client has then made a series of requests from our client following that illicitly obtained order. To that end:

1. The vast majority of your requests are beyond the terms of the order of 1 March 2019 or the Protective Order. We assume you are either using the fact that such orders exist to seek extraneous information from our client or deliberately choosing to ignore the scope of the orders. Either way, this is not reasonable or fair to an independent party to proceedings.
2. You have confirmed that you will not provide this correspondence to the court and are refusing to provide us with the contact details for the court. Aside from being an astonishing position to take (no doubt because you are unwilling to advise the court that you have procured an order on the basis of material misrepresentation), we note that you have included our correspondence of 5 March 2019 on the public docket. There is no justification for this inconsistent position. The only basis for this inconsistency is the revelation of Facebook's misrepresentation.
3. You also confirm our understanding that the purpose of the order is to prevent further breaches. That concern is not applicable to our client, as he does not have the information to leak. He deleted it as he was requested to do.

Further, we note that your letter of 8 March 2019 avoids answering the vast majority of the questions raised in our letter of 7 March 2019. For instance, you have not explained why you misled the court or why you did not contact our client before making the *ex parte* application. You have also refused to provide the contact details for the Judge.

In this context, your letter of 8 march 2019 has not progressed matters but rather affirmed that our client should not engage with your expansive requests. Rather, our client repeats his position, as articulated in our letter of 7 March 2019. Our client has been accused of various breaches of the Protective Order, of which your client has no evidence. Our client is unaware why you consider that he has breached the terms of the order. Rather than explain this to the court, you have instead deliberately misled the court to procure an order against our client. That order should therefore be reviewed by the Honorable Judge, in light of the misrepresentations made in your *ex parte* application. If the Honorable Judge still considers that there is a need for our client to provide a statement, our client will consider his position at that stage.

### 3. Further matters

You have repeated the request for our client's employment and engagement history. You cite the Protective Order as a legal basis for this request. You have misread the Protective Order. That Protective Order places no such burden on our client. That order provides no rights against our client for Facebook. To the contrary, the terms of the order exist solely between the Plaintiffs and Facebook. Rather, you have no legal entitlement to information from our client and you have not provided any legal basis to suggest you are otherwise entitled to it.

Further, we note your suggestion that our client should ask Mr Godkin to provide our correspondence to the court. This is a rather remarkable suggestion for you to make, given that your case is that Mr Godkin has breached the terms of the order. We (surprisingly) find ourselves having to remind you that our client is not represented by Mr Godkin. Rather, you were requested to assist our client and the court by providing the court with our correspondence.

In light of your unreasonable refusal to provide our letter of 7 March 2019, we repeat our request for the contact details for the Honorable Judge V. Raymond Swope. If we do not receive those details by 4pm GMT on 15 March 2019, our client reserves his rights in respect of your client.

#### 4. Conclusion

The facts are that (1) Facebook has misled the court and (2) you are refusing to tell the court or to provide the contact details for our client to inform the court of the same.

In order to avoid further prejudice and cost to our client, we put you on notice that we intend to provide our entire correspondence chain to the court. In doing so, we will inform the court of the material misrepresentation made in the statement by Mr Abrahamson. In light of that misrepresentation, we will suggest that the court should release our client from the need for a further statement in the absence of evidence that he has breached the terms of the Protective Order or that he is likely to.

In our letter to the court, we will also ask the court to weigh the need for the order against the costs to our client. Given that Facebook is unable to provide any evidence that our client has breached the order and went so far as misleading the court to procure the order, we anticipate the court will side with our client. Should the court, after a review of this correspondence, nevertheless further order our client to provide this information he will review his position at that stage.

We accordingly repeat our request for the contact details of the Judge so that we may write to him directly.

Finally, we note that you have put the Protective Order signed by our client onto the court docket without redacting our client's home address and telephone number. This is extremely concerning for our client. Please take urgent steps to redact this personal information from the Protective Order as currently on the docket.

Yours sincerely

**Irvine Thanvi Natas Solicitors**

cc. David Godkin, Birnbaum & Godkin, LLP

# DurieTangri

Sonal N. Mehta  
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smehta@durietangri.com

March 13, 2019

## VIA EMAIL

Ravi Naik  
Irvine Thanvi Natas Solicitors  
19 - 21 Great Tower Street  
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London, EC3R 5AQ  
rnaik@itnsolicitors.com

Re: **Redacted**

Dear Mr. Naik,

You have now written almost 20 pages about your client's involvement in Six4Three's case. But you refuse to answer the simple question whether your client, **Redacted**, complied with the protective order. Facebook fears that your silence on this question means that **Redacted** violated that order. Regarding your specific disagreements, Facebook has several responses.

**First**, we disagree with your position that we have provided "no evidence" that **Redacted** breached the protective order. *See* March 13, 2019 Letter at 4. Our March 8, 2019 letter provided an exhaustive recitation of documentary evidence implicating your client. *See generally* March 8, 2019 Letter at 2-4. We direct you to that letter for a fuller restatement of the evidence regarding your client. But as examples, our March 8, 2019 letter explained how Six4Three's legal team and journalists explicitly discussed using anonymous quotes from your client to further Six4Three's media objectives. *Id.* Those discussions took place *after* your client had signed his engagement letter with Six4Three and the protective order's Certification. *Id.* We also noted that your client personally contacted multiple reporters to discuss Six4Three's case *within days of executing an engagement letter barring him from "speaking with anyone about this matter."* Finally, we noted that your client offered to join a call discussing the case with a nonprofit group after executing the protective order's Certification. *See id.* (quoting GKLLP00020). Your letter refuses to explain any of this conduct.

Instead, your March 13, 2019 letter clings desperately to a single line from Facebook's *ex parte* application<sup>1</sup>, which reads: "Gross & Klein produced a new e-mail sent by **Redacted**,

<sup>1</sup> Your letter misrepresents the record on this point. The supporting declaration by Mr. Abrahamson does *not* state that "Gross & Klein produced a new e-mail sent by **Redacted**, Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters 'anonymously'." *See* March 13, 2019 Letter at 1. In fact, as

March 13, 2019

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Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters "anonymously." *Compare* March 13, 2019 Letter at 1, with Def.'s Ex Parte App. for an Order Enforcing the Stipulated Protective Order at 7:7-9. To be clear, that line does *not* state that [Redacted] said *anything* in the produced e-mail: Rather, the text—"Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters 'anonymously'"—is an *appositive*. An appositive is set off by a comma and "provides an explanatory equivalent" to a noun—in this case, to [Redacted]. See generally THE CHICAGO MANUAL OF STYLE at 314 (16th ed. 2010). Indeed, Facebook's brief would not make sense if "willing to confirm details" modified "e-mail"—simply put, people "will[]"; e-mails do not.

Moreover, your letter conveniently omits mention of *the very next line* in Facebook's *ex parte* application, which quoted directly from the e-mail that you accuse Facebook of misrepresenting: "In that e-mail, sent *mere days* after Six4Three explained the expert scheme to [Redacted], [Redacted] told the nonprofit [Redacted] ([Redacted]) that he was 'ready to join [a conference call] at that time if need be.'" See *id.* at 7:9-12. Were that not enough, Facebook placed [Redacted] e-mail before the Court. See Abrahamson Decl. Supp. Def.'s Ex Parte Appl. (Feb. 25, 2019), Ex. 4. Facebook did not misrepresent your client's statements.

**Second**, we disagree that our requests are "beyond the terms of the order of 1 March 2019." See March 13, 2019 Letter at 3. To the contrary, the Court's Amended Case Management Order No. 19 demanded a "verified declaration of [Redacted]" addressing: "(1) the date of receipt of a copy of the Stipulated Protective Order and blank Certification; (2) the date of execution of the Certification pursuant to Paragraph 4; (3) the date of receipt of confidential information; (4) compliance with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information" pursuant to Paragraph 6 . . . ; (5) the date of destruction of confidential information in their custody or control; and (6) the date of confirmation of destruction of confidential information to Mr. Godkin[]." See Am. Case Management Order No. 19 ¶ 3. We understand that Mr. Godkin informed your client of this order on March 1, 2019. Your client consented to the Court's jurisdiction for purposes of enforcing the protective order, but now refuses to comply with the Court's orders. Please be advised that the Court today ordered that your client submit a declaration complying with Amended Case Management Order No. 19 by 5 p.m. Pacific time on March 14, 2019. A true and correct copy of that order, which requests "the declarations of . . . [Redacted] in compliance with Amended CM Order no. 19," is attached hereto as Exhibit A. Please comply.

We will submit to the Court your letters to us and our replies. We will take steps to redact your client's personal information from the public docket.

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relevant here, that declaration states only that "Exhibit 4 is a true and correct copy of a document produced by Godkin & Klein, LLP, in this matter bearing Bates numbers GKLLP000200-GKLLP000201." See Abrahamson Decl. Supp. Def.'s Ex Parte Appl. ¶ 6 (Feb. 25, 2019).

March 13, 2019  
Page 3

Very truly yours,



Sonal N. Mehta

SNM:za

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JLeveroni@MPBF.com  
SBolotin@morrisonmahoney.com  
LLombard@morrisonmahoney.com

# EXHIBIT A

[REDACTED]

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**From:** ComplexCivil <complexcivil@sanmateocourt.org>  
**Sent:** Wednesday, March 13, 2019 11:35 AM  
**To:** ComplexCivil; Stuart Gross; Benjamin Klein; David Godkin; James Kruzer; Josh Lerner; Sonal Mehta; Laura Miller; Catherine Kim; SERVICE-SIX4THREE; Jack Russo; Chris Sargent; Thomas Mazzucco; Joseph Leveroni; Donald P. Sullivan  
**Subject:** RE: Six4Three v. Facebook (CIV533328) - Declarations Deadline

Correction: Thursday, March 14, 2019.

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**From:** ComplexCivil  
**Sent:** Wednesday, March 13, 2019 11:34 AM  
**To:** ComplexCivil <complexcivil@sanmateocourt.org>; 'Stuart Gross' <sgross@grosskleinlaw.com>; 'Benjamin Klein' <bklein@grosskleinlaw.com>; 'David Godkin' <godkin@birnbaumgodkin.com>; 'James Kruzer' <kruzer@birnbaumgodkin.com>; 'JLerner@durietangri.com' <JLerner@durietangri.com>; 'Sonal Mehta' <SMehta@durietangri.com>; 'Laura Miller' <LMiller@durietangri.com>; 'CKim@durietangri.com' <CKim@durietangri.com>; 'SERVICE-SIX4THREE' <SERVICE-SIX4THREE@durietangri.com>; 'Jack Russo' <jrusso@computerlaw.com>; 'Chris Sargent' <csargent@computerlaw.com>; 'Thomas Mazzucco' <TMazzucco@MPBF.com>; 'Joseph Leveroni' <JLeveroni@MPBF.com>; 'Donald P. Sullivan' <Donald.Sullivan@wilsonelser.com>  
**Subject:** Six4Three v. Facebook (CIV533328) - Declarations Deadline

At the hearing today, the Court further ordered the declarations of [REDACTED], [REDACTED], and [REDACTED] in compliance with Amended CM Order no. 19, issued on March 4, 2019.

These declarations shall be electronic served on all parties no later than Thursday, March 13, 2019 at 5 PM (PDT).

**Honorable Judge V. Raymond Swope**  
Superior Court of the State of California  
County of San Mateo

14 March 2019

By email: [complexcivil@sanmateocourt.org](mailto:complexcivil@sanmateocourt.org)

Case No.: CIV533328

Our ref: RAN/32411

Dear Judge Swope

Redacted

We are instructed by the above named.

Our client is aware of an email from the court of 13 March 2019, directing him to file a declaration by 5pm PDT on 14 March 2019. We write to respectfully request the judge to revisit that order. The order places an onerous burden on our client, which would take significant costs and resources for him to comply with.

Such an order would also be disproportionate and unfair, in light of the facts and his position within the case. In summary, our client is not a party these proceedings. He is an independent expert. Further, Facebook's counsel have admitted to misleading the court in procuring the order of 1 March 2019. Facebook's counsel also refused to provide our correspondence to the court or to provide this firm with the relevant contact details for the court, so we may contact the court directly.

We rather received the contact details for the court from Mr Murphy, counsel for Mr Godkin, at 20:38 GMT on 13 March 2019. Our client is accordingly writing to the court directly, at the first opportunity, so the court can understand his position and the

concerning actions of the Defendants and their legal team in procuring the order of 1 March 2019. We address the background and our client's position in turn.

1. Background

The background to our client's involvement in these proceedings is outlined below. Where we have set out matters in further detail in the evidence and correspondence chain enclosed with this letter, we have referred the court to those letters / evidence. References are in square brackets (e.g. [XXX]).

i. *Redacted background*

Our client is not a party to this litigation. Rather, he was instructed as an expert to Mr Godkin and the Plaintiffs to these proceedings. His retainer is enclosed [007-008]. His instructions were to consider whether there were any wider public interest elements to the documents.

Redacted has a track record in such tasks. Redacted that led to the company becoming a notorious and household name. Indeed, without Redacted noting the wider public interest in Redacted, it is unlikely that the international media would have been picked up on the story at all.

Our client's international standing and reputation is detailed in our letter to the Defendants of 5 March 2019 [001-004].

ii. *Redacted involvement in these proceedings*

The background to his involvement in these proceedings are set out in our letter of 5 March 2019 [001-004]. In summary, when Redacted was instructed to assist with his insight into the wider public interest, he did so without any legal advice. He of course did not see the need for legal advice, given that he was acting as an independent expert. As an aside, the court should note that the Defendants' counsel have repeatedly suggested

to [Redacted] that he should now take legal counsel from Mr Godkin, despite the suggestion that Mr Godkin has breached the terms of the order [051].

As detailed in our letter of 5 March 2019, [Redacted] did not receive any advice on the terms of the Protective Order. We will not rehearse those details herein. Suffice to say that [Redacted] is not a lawyer and acted under instructions at all times.

### *iii. Awareness of CM Order 19*

Our client was first alerted to CM Order no. 19 of 1 March 2019 by Mr Godkin on that same date. On consideration of that order, [Redacted] sensibly instructed this firm to seek independent advice on the terms of that order. He did so at his own cost (resulting in his expert involvement in these proceedings having cost him money, having never been paid by the Plaintiffs).

## 2. Correspondence with the Defendants

Having considered the order and the *ex parte* application that led it, [Redacted] instructed this firm to write to the Defendants' legal team to ascertain the basis for the application and the subsequent order. We enclose a copy of that correspondence chain and relevant exhibits, which serves to show:

1. The *ex parte* application was based on a material misrepresentation. The Defendants' application stated that [Redacted] said in an email that he was "willing to confirm details of Facebook's confidential information to reporters "anonymously"."<sup>1</sup> This was untrue. No such email exists. Despite some grammatical gymnastics by the Defendants in their letter of 13 March 2019 [057-059], they do not dispute that [Redacted] did not say these words.<sup>2</sup> Presenting

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<sup>1</sup> The declaration of Mr Abrahamson of 25 February 2019, filed in support of the *ex parte* application of 25 February 2019, stated that "Gross & Klein produced a new e-mail sent by [Redacted], Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously" ... In that e-mail, sent mere days after Six4Three explained the expert scheme to [Redacted], [Redacted] told the nonprofit [Redacted] that he was "ready to join [a conference call] at that time if need be." See id.3 In other words, Six4Three's "experts" were not only willing to talk with reporters from The Guardian, but also to collaborate with other media and non-profit entities."

<sup>2</sup> The Defendants' submissions in their letter of 13 March 2019 do not stand scrutiny. In particular, the last sentence of the paragraph quoted at footnote 1 above refers expressly, in the last sentence, to "that e-mail" from [Redacted]. "That" email does not support what is said in the *ex parte* application, as that application relied on an affirmative statement from [Redacted] that he would "confirm

these words as coming from [Redacted] was misleading and a material misrepresentation. That was the only evidence against our client in the *ex parte* application.

2. The Defendants refused to provide the complete chain of correspondence to the court or to provide [Redacted] with the contact details for the court [047-051].
3. We also understand that in oral submissions before the court on 13 March 2019, the Defendants did not refer to our correspondence, compounding the initial misrepresentation.

Our client is concerned that the Defendants have procured the order of 1 March 2019 by way of a material misrepresentation. Further, despite our client's best endeavours, the Defendants have not alerted the court to the misrepresentation, compounding the unfairness to our client. As explored below, the necessity of such an order, coupled with the cost to our client, is such for our client to respectfully request the court to reconsider the order.

3. Necessity of a declaration from [Redacted]

Despite our client seeking the assistance of the Defendants to contact the court, they have regrettably failed to engage with our client in a cooperative manner. Rather, they have approached this correspondence as hostile litigation between themselves and [Redacted], making their lack of independence for the need for an order abundantly clear.

To that end, we respectfully ask the court to review the need for our client to provide a declaration mindful of the following facts<sup>3</sup>:

1. The order was procured on the basis of wilful misrepresentation by the Defendants, portraying our client as having stated that he would be willing to breach the Protective Order where no such evidence in fact exists. Rather, there

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details of Facebook's confidential information to reporters "anonymously". This was simply not true and the evidence did not bear this out. No amount of wriggling by the Defendants can get them out of this simple fact – they had misled the court.

<sup>3</sup> These facts are dealt with in detail in our letters to the Defendants lawyers as enclosed with this letter.

is no evidence that our client was willing to breach the terms of the order or that he has breached the terms of the order.

2. There was no need for the Defendants to make an application on an *ex parte* basis. They could have reached out to our client before making the application. They did not do so, in order to leverage the court against him. This is demonstrated by the subsequent requests to our client went way beyond the terms of the 1 March 2018 order or the Protective Order. Regrettably, they went so far as to mislead the court to get that order.
3. The purpose of the order was to identify and prevent further leaks of the confidential and highly confidential information. The Defendants own case is that they do know who breached the order. In our letters of 5 and 7 March 2019 **[001-004]** and **[039 – 046]**, he also confirmed to the Defendants that he was in no way involved in the issues in their *ex parte* application. Our client also deleted the information as requested by Mr Godkin, so there is no prospect of him leaking the information.
4. The order requires our client to explain his compliance with the order by not "revealing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information". This is not a simple task. In particular:
  - a. As above, our client has not received any assistance with understanding the terms of the order. He was reliant on those instructed him to appreciate the order and always acted on their instruction. The Plaintiffs and Mr Godkin are said to have breached the order. He does not wish to mislead the court in any way, in contrast to the regrettable conduct of those that have instructed him and the Defendants.
  - b. As such, in order to ensure that he is able to deal with this fully, he sought the Defendants to explain why they believe that he had breached the order. No explanation has been provided, other than reliance on the words and actions of third parties. At most, the Defendants' evidence suggests

that our client emailed a chain to say he was willing to join a call *if needed*. He did so purely in his expert instruction, to explain that there was a public interest in the documents. He did not need to discuss the documents directly to explain their public importance.<sup>4</sup> There is also no evidence that he in fact joined the call. His records confirm that he did not. He is therefore none the wiser as to why it is said that he has not complied.

- c. It is also not clear exactly which information the court considers “confidential or highly confidential” information. For instance, it is not clear if all the case summaries he received were covered by the Protective Order. He understood that one was not. He further understands that there is a live question about the status of these “case summary” documents before the court. He will have to get guidance on these matters, then consider his background involvement in the case.
- d. [Redacted] is also unclear about the extent to which he is said to have breached the other terms of the Protective Order. As far as he can understand, the Protective Order subsists between the Plaintiffs and the Defendants. Nevertheless, the Defendants have accused [Redacted] of breaching the wider terms of the Protective Order by for example not providing a list of former employers to the Defendants. It is not clear to us that the Protective Order entitles the Defendants to such information and when asked to explain, no explanation was forthcoming. Nevertheless, this example shows to serve the wider issues faced by [Redacted] by the order.
- e. [Redacted] would nevertheless be prepared to sift through the entire history of his involvement in the case (so far as such records exists) to certify what he has or has not done. He has deleted a large portion of information at the direction of Mr Godkin, which makes any such undertaking difficult.

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<sup>4</sup> The documents are of public interest, as shown by the actions (and reaction) of the British DCMS Committee of Parliament.

- f. On any consideration, this is a vast undertaking that he will have to do at his own cost. He will also have to pay for legal advice, both in this jurisdiction and in the US.
5. It is also not clear to our client what jurisdiction the Defendants have to seek these orders. As per the terms of CM Order 19, the order subsists against the Plaintiffs rather than to [Redacted] directly.
6. He is also conscious of legal privilege and requires advice to this end.

Despite these matters, [Redacted] is nevertheless seeking to assist the court as far as he can. He has provided documents and explanations to the Defendants, with a view to them providing this information to the court. He has however been hampered by the conduct and the uncooperative attitude of the Defendants.

Considering that (1) the Defendants *ex parte* application was based on material misrepresentation (2) that the purpose of the application is met by other means and (3) the cost and time it would take [Redacted] to comply, our client respectfully asks the court to reconsider the need for such a declaration from our client. It is plain that such a declaration is burdensome and would be unfair to our client.

Should the court nevertheless decide that [Redacted] is still required to provide such a declaration, our client will review his position at that stage. However, for reasons detailed above, such a declaration will take time and cannot be produced within 24 hours. We trust that the court will in any event understand the predicament faced by our client and release him from the need to provide such a declaration.

Should the court have any queries in respect of this matter, please contact Mr Ravi Naik of our offices.

Yours sincerely

**Irvine Thanvi Natas Solicitors**